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FEDERAL COMMUNICATIONS COMMISSION  
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February 8, 2001

**VIA HAND DELIVERY**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

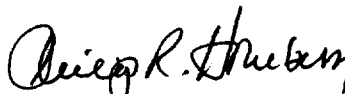
**Re: Reply to Oppositions of EchoStar Satellite Corporation, DIRECTV, Inc., and Association of Local Television Stations, Inc., filed by the Office of the Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, and Division 1-A Athletic Director's Association  
in CS Docket No. 00-2**

Dear Ms. Salas:

Enclosed for filing please find an original and eleven (11) copies of the Reply to Oppositions of EchoStar Satellite Corporation, DIRECTV, Inc., and Association of Local Television Stations, Inc., filed by the Office of the Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, and Division 1-A Athletic Director's Association in the above-referenced docket.

Please stamp and return to this office with the courier the enclosed extra copy of this filing designated for that purpose. Please direct any questions that you may have to the undersigned.

Respectfully submitted,



Philip R. Hochberg

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Enclosures

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re Matter of:

Implementation of the Satellite Home  
Viewer Improvement Act of 1999

Sports Blackout Issues

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CS Docket No. 00-2

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**REPLY TO**

**OPPOSITIONS OF**

**ECHOSTAR SATELLITE CORPORATION,**

**DIRECTV, INC., AND**

**ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

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February 8, 2001

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re Matter of:	)	
	)	
Implementation of the Satellite Home	)	CS Docket No. 00-2
Viewer Improvement Act of 1999	)	
	)	
Sports Blackout Issues	)	

**REPLY TO**  
**OPPOSITIONS OF**  
**ECHOSTAR SATELLITE CORPORATION,**  
**DIRECTV, INC., AND**  
**ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The Office of the Commissioner of Baseball ("Baseball"), the National Basketball Association ("NBA"), the National Football League ("NFL"), the National Hockey League ("NHL"), and the Division 1-A Athletic Director's Association ("Athletic Directors") (jointly "the Leagues") hereby file this Reply to Oppositions of EchoStar Satellite Corporation ("EchoStar"), DIRECTV, Inc. ("DIRECTV"), and the Association of Local Television Stations, Inc. ("ALTV") before the Federal Communications Commission, pursuant to Section 1.429(f) of the Commission's Rules, in response to the Report and Order in CS Docket No. 00-2, released November 2, 2000.<sup>1</sup> EchoStar, DIRECTV, and ALTV all filed Oppositions to the Petition for Reconsideration filed on November 29, 2000 by the Leagues.

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<sup>1</sup> FCC 00-388, \_\_ FCC Rcd \_\_, 65 Fed. Reg. 68082 (Nov. 14, 2000) ("Report and Order").

## ARGUMENT

### (a) Notice to Satellite Carriers

Both EchoStar and DIRECTV focus primarily on the objection of the Leagues to the “48-hour rule” proposed by the Commission in its Report and Order. But in doing so, the carriers ignore that the proposed rule – which would require the Leagues to provide notice to satellite carriers within “forty-eight hours of the time the telecast is scheduled”<sup>2</sup> – would impose burdens on them as well as on the Leagues. The notice proposal advanced in the Leagues’ Petition, on the other hand, would substantially reduce the burdens on both the Leagues and the carriers.

Under the Leagues’ proposal, notices for regular season games will be provided to the carriers by the Monday preceding the calendar week of the blackout. In the vast number of circumstances, this would provide notices no less than six days before a blackout at the beginning of the season and, in most cases, six months before blackouts at the end of the regular season.

As the Leagues demonstrated in the Petition for Reconsideration, the proposed rule would require them to give notices every time a single team’s schedule is completed. Moreover, because the release of each successive schedule may alter the information contained in previous notices, the new rules also effectively mandate the creation of multiple, additional notices revising notices previously sent. As the Leagues pointed out:

[R]ather than receiving all notices at one time [as done for the past quarter-century with cable], blackout requests would come dribbling in to the carriers over a period of weeks or months. It is difficult to imagine a more inefficient regime.

The practical difficulties of complying with the proposed rule are illustrated in Attachment A.

The carriers – who are charged with complying with the rules – appear to want to

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<sup>2</sup> Report and Order at Para. 69, 65 Fed. Reg. at 68096.

complicate their own obligation, preferring the burden of receiving hundreds of notices over a period of months, rather than maintaining the straightforward notice procedures used both by cable (under former Section 76.67) and by satellite (through marketplace negotiations) for years.

Rather than focus on the merits of the proposed rule, EchoStar complains again of the Commission's finding "that the evidence offered by EchoStar and DirecTV was inadequate."<sup>3</sup> In so doing, it conveniently ignores that neither EchoStar nor DIRECTV ever offered any evidence and none is cited in their most recent filings. EchoStar again attempts to create a problem that doesn't exist, when it points to the "nationwide nature of satellite systems,"<sup>4</sup> ignoring that blackouts are not sought on a nationwide basis, but market-by-market and that the carrier is no different in that respect than a major Multiple System Operator.<sup>5</sup> EchoStar further complains that "no new evidence, study or specific facts are offered by the Sports Leagues in support of their claim."<sup>6</sup> But new forms of compliance and new evidence are not needed at this point: facts already a part of the record show that carriers can and do comply now with rules virtually identical to what the Leagues are seeking.

For its part, DIRECTV is fearful of what it will have to do to comply with blackout requests.<sup>7</sup> But, as the Leagues stated in Reply Comments and in its Opposition to EchoStar's Petition for Reconsideration:<sup>8</sup>

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<sup>3</sup> EchoStar Opposition at 3.

<sup>4</sup> EchoStar Opposition at 2.

<sup>5</sup> Indeed, the problems would be mitigated, since the blackouts would be centralized, rather than having to be done by regional headends.

<sup>6</sup> EchoStar Opposition at 3.

<sup>7</sup> DIRECTV Opposition at 3.

<sup>8</sup> See Reply Comments of National Basketball Association and National Hockey League at 3, Reply Comments of Baseball at 3-4, and Reply Comments of the National Football

[T]he major carriers already black out regular season and post-season sports events in particular areas of the country pursuant to their contractual distribution agreements with Regional Sports Networks and out-of-market agreements with the leagues. The carriers have shown the ability to abide by – and certainly have not complained about – blackout restrictions when it is in their economic self-interest to provide blackouts.

There is only one possible reason why the carriers continue to object to a rule change which would be to their benefit: they expect that the burdens would be so significant on the Leagues that the Leagues will simply forgo seeking the blackouts. That is no basis on which to impose a 48-hour rule.

**(b) Protection for Border Teams**

EchoStar and ALTV seize on what they believe is an attempt by the Leagues greatly to expand protection for border teams.<sup>9</sup> As the Leagues stated, “The Commission ... should clarify that Section 76.127 applies to any subscribers in the United States.”<sup>10</sup> Since Section 76.127 by definition applies to an area of 35 miles, it should be clear that the proposal of the Leagues applies only to any U.S. subscriber within a zip code that is within 35 miles of a Canadian team’s reference point.

**(c) Specific Language of Section 76.128**

In reviewing the language of Section 76.128, the Leagues pointed out that the Commission had inadvertently revised the blackout standard that it said it intended to follow.<sup>11</sup> The Commission unwittingly narrowed the zone of protection. Under the new rules, blackouts

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League at 3-6. See also the Leagues’ Opposition to Petitions for Reconsideration at 2.

<sup>9</sup> EchoStar Opposition at 4-5; ALTV Opposition at 7.

<sup>10</sup> Leagues’ Petition for Reconsideration at 6.

<sup>11</sup> See Report and Order at Para. 85, 65 Fed. Reg. at 68098.

need not occur in communities within the specified zone of the community where a sports event is taking place, if those communities are at the same time within the Predicted Grade B contour of any station televising the event, even if the station is not the home team's "local" station.<sup>12</sup> Under the cable rules – which were to be a model for the new satellite rules – communities within the Predicted Grade B contour are blacked out if within the specified zone of the site of the game.

EchoStar tries to re-interpret the goal of the new blackout rules in opposing the Leagues' request that the Commission remedy an obvious drafting error.<sup>13</sup> ALTV, on the other hand, calls for a further examination of the impact.<sup>14</sup>

Neither approach is correct. The Commission was aware when it adopted the sports blackout rule 25 years ago that

... these importations could force sports clubs to extend their blacked out zone of protection to include all distant stations which may be carried... Thus the games would be available to fewer television viewers, contrary to our communications policy and the sports broadcasting policy of Congress.<sup>15</sup>

Absent the same protection today, the same possibility exists.<sup>16</sup>

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<sup>12</sup> The Leagues offered the example of a Racine, Wisconsin cable or satellite subscriber located within 35 miles of Milwaukee in a case where WGN-TV, Chicago, televises a game between the Chicago Cubs and the Milwaukee Brewers taking place in Milwaukee and which is not being televised by a Milwaukee station. Under the old cable sports rule, a Racine cable operator would be required to blackout out the WGN-TV telecast in Racine because the Brewers' flagship station is not televising the event. Under the new rule, neither the cable operator nor satellite carrier serving Racine would have to blackout the WGN-TV telecast because WGN-TV places a Grade B contour over Racine.

<sup>13</sup> EchoStar Opposition at 5-6.

<sup>14</sup> ALTV Opposition at 8.

<sup>15</sup> Report and Order in Docket No. 19417, 34 RR2d 683, 704, 54 FCC 2d 265, 282, 40 Fed. Reg. 30641, \_\_\_\_ (1975).

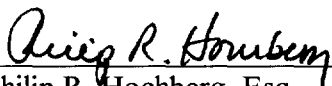
<sup>16</sup> Moreover, the Leagues raise the concern that in amending the cable rules as it did, the Commission failed to give adequate notice and the opportunity to comment as required under the Administrative Procedure Act. This substantial change in the protection of the cable rules was never proposed nor contemplated by the Notice of Proposed Rulemaking in CS Docket No. 00-2.

## CONCLUSION

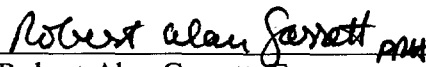
For the reasons stated above and in their earlier Comments, Reply Comments, Petition for Reconsideration, and Opposition to Petitions for Reconsideration filed by EchoStar and DIRECTV, the Leagues urge adoption of regulations consistent with the positions taken.

Respectfully Submitted,

NATIONAL BASKETBALL ASSOCIATION  
NATIONAL FOOTBALL LEAGUE  
NATIONAL HOCKEY LEAGUE  
DIVISION 1-A ATHLETIC DIRECTOR'S ASSN.

  
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February 8, 2001



## ATTACHMENT A

### **DIFFICULTIES ASSOCIATED WITH THE 48 HOUR NOTICE REQUIREMENT**

Every year, over a period of several months before the opening of Baseball season in early April, each of the 28 U.S. Major League Baseball clubs establishes and finalizes its telecasting schedule for the upcoming season. Each team plays 162 games per season.

Each individual team's television schedule is established separately from that for every other team, and is finalized at different points in time, typically in January or February. Once each individual team's television schedule is finalized the schedule is immediately forwarded to the Office of the Commissioner of Baseball ("Baseball"). Baseball typically receives schedules from the teams over a period of several weeks, from about mid-January through the end of February.

The preparation of a sports rule notice requires identification of each home game for a given team for which the team's flagship station does not hold over-the-air broadcast rights but for which the visiting team's flagship does. Before it can comply with the notification requirements of the cable sports rule Baseball accordingly must have in hand the final television schedules for all of the clubs so that it can cross-reference the schedules for the home games which will not be televised by the home team flagship with the flagship television schedules for each visiting team. Only once all of these schedules have been finalized and provided to Baseball by the end of February is it possible for Baseball to derive a final sports rule notification schedule for each team.

#### Simplicity of System Under Cable Rules – An Example

A specific example will illustrate the cable sports rule notification process. For the Boston Red Sox, the sports rule notification schedule is created once all of the 28 team schedules have been received by Baseball at the end of February. The schedule is derived by identifying each of the Red Sox home games for which the club's flagship station has not been afforded broadcast rights. This schedule of games is in turn cross-referenced against the television schedules for every other team's away games in Boston, to determine which teams' flagship stations have broadcast rights for the team's away game in Boston. A final schedule is then prepared on behalf of the Red Sox reflecting all of the Red Sox games in Boston that will not be televised by the Red Sox flagship but will be televised by the visiting team's flagship.

The final schedule is then included with the Red Sox sports rule notice mailed to cable operators serving the hundreds of communities located in whole or in part within 35 miles of Boston. The mailing is made in early- to mid-March, approximately two to three weeks before the opening of the season. Cable operators therefore receive notice anywhere from two weeks to six months before regular season blackouts must be made.

### Notice Under New Satellite Rules

Under the satellite rules adopted by the Commission, this well-established system is turned on its head. Under the satellite rules Baseball would appear to be required to notify carriers of each team's individual television schedule within 48 hours of that schedule's release. Any such requirement poses severe practical difficulties. By definition it is not possible to determine which games are subject to sports rule protection until the television schedules for all of the teams are known. Instead, under this regimen an incomplete and largely meaningless notice must be created within 24 hours (so as to be received by carriers within 48 hours) of the issuance of the television schedule for any individual team, even if it is not yet known whether the competing team will or will not be televising a given game and thus whether the sports rule will apply to the telecast in question.

#### A. Release of First Television Schedule

The scenario described above for the Boston Red Sox would operate as follows under the satellite rules: Assume that the Boston Red Sox is the first team in the League to finalize its television schedule, and that it transmits the schedule to Baseball on Friday, January 19. When the schedule is received Baseball would identify every Red Sox away game for which the Red Sox flagship station has broadcast rights. (It would also note home game telecasts of the Red Sox.) Because Baseball does not yet have the television schedules for the home games of the other teams and consequently does not yet know which games of the other teams are entitled to sports rule protection, Baseball would be required to send a notice, for receipt by carriers no later than Sunday, January 21, invoking sports rule protection on behalf of every team for every Red Sox away game that will be televised by the Red Sox flagship.

As shown below, with the subsequent release of television schedules by other teams, there will be a need to send multiple revised notices over a period of weeks on behalf of the Red Sox.

#### B. Release of Subsequent Schedules

Assume Baseball next receives the Chicago White Sox television schedule, on Monday, January 22. Baseball would first review the schedule for the White Sox away games (as it did with the Red Sox). For those White Sox away games that the White Sox will be televising, but for which the television schedules for the home teams have not yet been received (every team except the Red Sox), multiple sports rule notices would have to be prepared for receipt by Wednesday, January 24, on behalf of each home team, in the event that team's flagship will not be televising the game.

This just covers the White Sox away games. As for the White Sox home games, assume that the Red Sox flagship holds broadcast rights for the Red Sox/White Sox match-up in Chicago and that Baseball would accordingly have previously invoked

protection for that game on behalf of the White Sox. If the White Sox's newly-released schedule now reveals that the White Sox will be televising its home game against Boston, a notice revoking the previous invocation of protection by the White Sox will be required to be sent.

For every team whose schedule, once released, ultimately reveals that a game will be televised by the home team flagship, a series of further notices will be required to be sent (for receipt within 48 hours of the release of each such schedule), revoking the previous demand of protection on their behalf that was occasioned by the release of the earlier television schedules.

With the release of each successive team's television schedule, the numbers of meaningless notices and subsequent revocation notices snowballs. Baseball would be required to generate thousands of pages of unnecessary paperwork, most of it meaningless, within impossibly short time frames, including over weekends and holidays.

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This system benefits no one. Like the cable operators, who have fared perfectly well under the cable sports rule regime for years, the carriers would operate much more effectively if they were to receive, on a single day in advance of the opening of the season, a single sports rule notice for each team specifying all of the blackout protection requirements for that team.

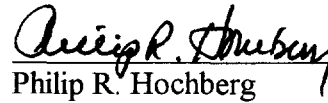
### **CERTIFICATE OF SERVICE**

I hereby certify that on this ~~9<sup>th</sup>~~ day of February, 2001, I caused a copy of the foregoing  
REPLY TO OPPOSITIONS OF ECHOSTAR SATELLITE CORPORATION, DIRECTV, INC.,  
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